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KWOK CHEUNG CHOW

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 14-0196 CRB
)	
Plaintiff,)	SUPPLEMENTAL STATEMENT RE: DISCOVERY
)	
v.)	
)	
KWOK CHEUNG CHOW, a/k/a "Raymond)	
Chow", a/k/a "Hai Jai", a/k/a)	
"Shrimpboy".)	
)	
Defendant.)	
)	

This supplemental Statement of Discovery is to advise the court of developments bearing on the status of discovery. Since filing of the previous statement (Document 592) defense counsel ran several automated searches on discovery. Various search terms were used based on file properties of the video footage which was referenced by defense counsel as potential drone surveillance. The search revealed six folders¹ in total with a total of twenty separate files

¹ File path: \Recordings\US-800002\, subfolders 1D142, 1D230,
RAYMOND CHOW'S OPPOSITION TO MOTION FOR PROTECTIVE ORDER
CR 14-0196 CRB

1 demonstrating aerial surveillance taking place in Antioch, Daly City,
2 the Bay of San Francisco, and the City of San Francisco. This
3 footage totals approximately twenty hours.² Several of the files
4 involved locations which can be traced back to a defendant's home,
5 vehicle, or business. The relation of the remaining files to the
6 present case is currently unknown. The footage appears to come from
7 five different dates ranging from 2012 to 2014. The scope of
8 surveillance is extensive, including residential neighborhoods,
9 freeways, densely populated areas with numerous non-targets present,
10 and even some surveillance taking place in a San Francisco school
11 yard playground while children were present and playing. The
12 curtilage of homes was recorded as well. Most details at ground
13 level are picked up, including peoples hand movements, what was
14 occurring inside a vehicle, physical features, and so on.

15 Defense sought advice of a consultant and almost all files were
16 identified as most likely a result of manned aerial surveillance,
17 such as a helicopter. It appears as though the cameras used in each
18 of the videos were not the same giving rise to the inference that
19 more than one aircraft was used at different times. Surveillance
20 aircraft for law enforcement are usually staffed by at least two law
21 enforcement officers, one operates the aircraft and the other
22 operates the camera equipment.

23 Defense ran an automated search on "aerial surveillance" on the
24 body of discovery and found only two references total. Both

25 1D239, 1D240, 3.5, 1D262, 1D358 and 1D367.

26 ² Actual files and footage may be more but defense counsel is
27 forced to guess at proper search terms because a useful discovery
28 index has not been provided and the task too arduous to personally
verify the existence of the files.

1 references involved 302s which were turned over regarding physical
2 surveillance which took place in the course of this investigation in
3 New York and Georgia. The New York and Georgia field offices clearly
4 identified aerial surveillance and interwove observations from aerial
5 surveillance into the narratives of the appropriate 302s.
6 Furthermore, the agents who conducted the aerial surveillance were
7 clearly identified (presumably one pilot and one observer). Opposite
8 of here, 302s exist for East Coast aerial surveillance but no videos
9 have been located by defense counsel. This video footage was not
10 addressed in the Government's Statement of Discovery as being
11 something that was turned over or something that they intend to turn
12 over.

13 Here, there are no references to aerial surveillance by agents
14 anywhere other than identified above; specifically, there is no
15 mention of aerial surveillance by agents in San Francisco or
16 California as a whole.³ More alarming than originally outlined in
17 defense's previous statement, in our discovery there are no
18 references which correspond to a majority of the dates embedded into
19 the aerial surveillance video footage. It is not apparent what the
20 nature of these activities were. No aerial surveillance footage can
21 be located regarding any of the major co-defendants in this case.
22 This escalates defense concerns about the need to identify the body
23 of discovery immediately because it is necessary for at minimum
24 pretrial motions and so that defense counsel can monitor critical
25 discovery omissions, many of which could be exculpatory.

26
27 ³ Due to lack of a meaningful discovery index defense is forced
28 to rely on computer software to search the body of discovery based on
search terms thought up and input by defense counsel and staff.

1 An example of why these are necessary for pretrial motions
2 relates to the Necessity requirement of search warrant applications.
3 At least one of the videos discovered may dramatically refute an FBI
4 agent's sworn representation to the court regarding necessity on one
5 target subject in particular. The pilot and observer would be
6 witnesses who could impeach the declarant-agent. Furthermore, the
7 suggestion that a form of surveillance along with the accompanying
8 witlessness who conducted the surveillance could be concealed from
9 defense counsel and/or the AUSAs on this case is concerning whether
10 it is intentional or not. Of course intentional omissions have
11 severe implications. The AUSAs have pledged to give defendants 302s
12 and unless defense counsel is missing something then defendants have
13 not been provided significant information when it matters most on an
14 enormous case like this: pretrial. Furthermore, it does not reason
15 that the FBI would have used extensive taxpayer resources for manned
16 aerial surveillance on minor co-defendants, but would have conducted
17 no such surveillance on major co-defendants. Defense counsel
18 believes the AUSAs would not have concealed, and would have complied
19 had they had known, aerial surveillance videos and 302s existed. Or,
20 they would have notified defense counsel of missing documentation.

21 Since the last Statement of Discovery (Document 592), defendants
22 have contacted the Government in an attempt to informally resolve the
23 issue of identifying the body of discovery and a complete index of
24 what is to be expected. A dialogue is anticipated and these issues
25 will be resolved through traditional discovery channels. This
26 supplemental statement serves only to alert the court and to
27 supplement the record as to the potential document dump which has

1 occurred.

2 The issue of mega discovery in multiple co-defendant cases is
3 not a new one. The appropriate handling of discovery in these cases
4 necessitates nationwide reform and the courts and the Department of
5 Justice are making great efforts to ensure Constitutional
6 considerations are being met. However, until such reform is reached,
7 further investigation and prosecution of undercover simulated crime
8 investigations, such as in this case, should be halted in the
9 Northern District pending a process which guarantees organization and
10 indexing of discovery on a proactive and concurrent basis to the
11 investigation so as to avoid a crash collision between the interests
12 of prosecution and Due Process rights of defendants. U.S. v. Chow is
13 not the only case this has occurred recently in the Northern
14 District.⁴ Suspending investigations such as these is especially so
15 regarding defendants who are held without bond. A suspension is
16 particularly appropriate because the current procedure improperly
17 shifts budgetary demands to the CJA, courts, and private counsel,
18 when the burden should be borne by the Department of Justice.

19
20
21 /s/ CURTIS L. BRIGGS
22 CURTIS L. BRIGGS
23 Attorney for Defendant
24 KWOK CHEUNG CHOW
25

26 ⁴ In U.S. v. Williams the discovery coordinator filed a report
27 addressing many similar issues regarding the discovery process.
28 Williams is being prosecuted by at least one of the same AUSAs as
Chow. See Exhibit 1.